

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF JAMES PETHEL § No. 169, 2009
FOR A WRIT OF MANDAMUS §

Submitted: April 13, 2009
Decided: April 21, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 21st day of April 2009, it appears to the Court that:

(1) The petitioner, James Pethel, seeks to invoke this Court’s original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Delaware Department of Correction (“DOC”) to release him from custody in Delaware. The State of Delaware has filed an answer requesting that Pethel’s petition be dismissed. We find that Pethel’s petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

(2) The record reflects that, in June 2006, a Delaware grand jury indicted Pethel on the charge of Arson in the Second Degree. Pethel was serving a sentence in Pennsylvania at the time of the indictment. In or about March 2007, Pethel waived extradition and was returned to Delaware under

¹ Del. Const. art. IV, § 11(6); Supr. Ct. R. 43.

the Interstate Agreement on Detainers (“IAD”).² In May 2008, Pethel pleaded guilty in the Superior Court to Arson in the Second Degree. He was sentenced to seven years of incarceration at Level V, to be suspended after six months for Level IV work release and decreasing levels of probation.³

(3) Pethel subsequently filed a petition for a writ of habeas corpus in the Superior Court, seeking to be returned to custody in Pennsylvania. Following a hearing, the Superior Court denied Pethel’s petition. This Court affirmed the judgment of the Superior Court.⁴ The record reflects that Pethel was returned to Pennsylvania custody in November 2008, but that he has since been extradited back to the custody of the DOC.

(4) In his petition, Pethel claims that his extradition to the custody of the DOC is illegal. He seeks reversal of his conviction and release from Delaware custody on the grounds of violations of IAD procedures, the terms of the plea agreement and the United States Constitution.

(5) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.⁵ As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear

² Del. Code Ann. tit. 11, § 2540 et seq.

³ The sentencing order reflects an effective date of March 8, 2007, the date Pethel was incarcerated in Pennsylvania. As a result, Pethel received credit not only for the time he served in Delaware awaiting disposition of the Delaware charges under the IAD, but also for the time he served in Pennsylvania.

⁴ *Pethel v. State*, Del. Supr., No. 577, 2008, Ridgely, J. (Apr. 6, 2009).

⁵ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.⁶ This Court will not issue a writ of mandamus to compel a trial court to decide a matter in a particular way.⁷

(6) There is no basis for the issuance of a writ of mandamus in this case. As an initial matter, this Court has no authority to issue a writ of mandamus directly to the DOC, as requested by Pethel.⁸ Moreover, even assuming that Pethel had requested that his petition be directed to the Superior Court, he has failed to demonstrate that the Superior Court has arbitrarily failed or refused to perform a duty owed to him or that no other adequate remedy is available.⁹ Finally, Pethel's request for reversal of his conviction and release from prison are not appropriate forms of mandamus relief.¹⁰ For all of the above reasons, Pethel's petition for a writ of mandamus must be dismissed.

NOW, THEREFORE, IT IS ORDERED that Pethel's petition for a writ of mandamus is DISMISSED.

BY THE COURT:
/s/ Randy J. Holland
Justice

⁶ *Id.*

⁷ *Id.*

⁸ Del. Const. art. IV, § 11(6); Supr. Ct. R. 43.

⁹ *In re Bordley*, 545 A.2d. at 620.

¹⁰ *Id.*